IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4280 of 2001

to

SPECIAL CIVIL APPLICATIONNo 4294 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMJI MANDIR TRUST

Versus

SAROJBEN WIDOW OF MANGALBHAI SOMABHAI VAGHRI

Appearance:

MR YATIN SONI for Petitioners No. 1-1/3

MR MURALI N DEVNANI for Respondents No. 1-2,2/1/1-2/1/7,4-15

MR AD OZA for Respondents No. 16

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 04/10/2001

ORAL JUDGEMENT

A common issue has been raised in all these petitions and hence all the petitions are being disposed of by this common judgment. These petitions have been filed for quashing and setting aside the common order dated 25th January, 2001 and the order dated 19th March, 2001 passed by the Deputy Collector, Nadiad in Electricity Appeal Nos. 26 of 2000 to 39 of 2000 and 41 of 2000 and common order dated 21st May, 2001 passed by the 2nd Extra Assistant Judge, Kheda at Nadiad in Civil Revision Application Nos. 2 of 2001 to 16 of 2001 holding that the respondents have no right, power or authority to file an application under section 23-A of the Bombay Rent Act and the respondent no. 6 Gujarat Electricity Board through respondent no. 6 has been directed not to allot or provide electricity connection to the respondents in the land bearing survey nos. 2002 and 2003 of Nano Bhagol area of Dakor, Ta: Thasra.

2. The respondents or their ancestors filed the application before the Deputy Collector, Nadiad against the petitioner nos. 1/1 to 1/3 for a direction to the Gujarat Electricity Board to give electricity connection to the respondents in property bearing nos. 596, 591, 600, 689, 600/2, 594,599, 593, 592, 598, 597/1 and 500 of Dakor town, Ta: Thasra stating therein that they are occupying in the aforesaid properties since last more tha 60 years and they are in physical possession since the time of their ancestors. The petitioners have not given consent for obtaining electricity connection and hence the applications have to be filed before the Deputy Collector for getting electricity connections under section 23-A of the Bombay Rent Act. It was stated before the authority concerned that the petitioners are owners and a copy of the assessment form of Dakor Nagarpalika for the year 1988-89 was filed and they were in physical possession of the property since more than 60 years. A copy of plaint of the suit filed in Civil Court being Regular Civil suit no. 91 of 1979 was also filed and it was stated in the said suit that the respondent has to pay Rs.90/- per month. At the relevant time, the petitioners were not present and so the suit was dismissed. The second suit being Civil suit no.100 of 1993 was filed in Civil Court, Dakor. After perusing the material on record, the Deputy Collector found from the copy of the assessment form of the properties of Dakor Municipal properties that the names of the respondents were shown in column of "enjoyer". From the copy of Civil suit no. 91 of 1979, the respondent appeared as a tenant and an injunction was also issued against Gujarat Electricity Board. On the basis of the physical possession of the respondent, the Deputy Collector

ordered that the respondents be provided electricity at their own costs in the municipal properties as stated above, by an order dated 7th January, 2001. Being aggrieved by the said order of the Deputy Collector, the petitioners filed Revision Applications before District Court, Kheda at Nadiad. The 2nd Extra Assistant Judge, Kheda at Nadiad heard and decided Revision Application nos. 2 of 2001 to 16 of 2001 and dismsised the same by his common judgment and order dated 21.5.2001. Being aggrieved by the said common judgment of the District Court, Kheda at Nadiad, the petitioners have filed the present petitions in this Court.

3. The learned counsel for the petitioners contended that the respondents are claiming to be in possession of the agricultural land of the petitioner trust. The provisions of The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short the "Act") are not applicable in the present case. The respondents are claiming to be in possession over the encroachment on the agricultural land of the petitioner trust. Section 5(8) of the said Act defines the word "premises" as under:

"(8) "premises" means-
(a) any land not being used for agricultural purpose.
(b) any building or part of a building let separately (other than a farm building) including-
(i) the garden, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,
(ii) any furniture supplied by the landlord for use in such building or part of a building,
(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof,
but does not include a room or other accommodation in a hotel or lodging house."

The word "tenant" has also been described under section 5(11) of the Act which reads as under:

"5(11) "tenant" means any person by whom or on whose account rent is payable for any premises and includes-
(a) such sub-tenanmts and other persons as have derived title under a tenant (before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance,1959);

(aa) any person to whom interest in premises has been transferred under the proviso to (sub-section (1) of section 15)

(b) any person remaining after the determination of the lease, in possession with or without the assent of the landlord, of the premises leased to such person or his predecessor who has derived title (before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959;)

(c)(i) in relation to premises let for residence, any member of the tenant's family residing with the tenant at the time of, or within three months immediately preceding, the death of the tenant as may be decided in default of agreement by the Court, and

(ii) in relation to premises let for business, trade or storage, any member of the tenant's family carrying on business, trade or storage with the tenant in the said premises at the time of the death of the tenant as may continue, after his death, to carry on the business, trade or storage as the case may be, in the said premises and as may be decided in default, if agreement by the Court)."

It is also contended by the learned counsel for the petitioners that it had been argued before the District Court that the provisions of the Rent Act and more particularly the provisions of section 23-A of the Act are not applicable in the present case, inasmuch as the property is an agricultural land and NA permission was not obtained for constructing the housess of the respondents over the land. In case NA permission has not been taken, all encroachments would amount to be illegal encroachments and if the construction is illegal, then the provisions of the the Rent Act would not be applicable. Secondly, at no place, the petitioners have admitted the respondents to be their tenants and the respondents have not filed any evidence or any material on record to show that they are tenants of the premises in question as claimed by them. The respondent authorities have committed an error on the face of the record only on the basis that some municipal assessment has been filed which shows possession of the respondents. Mere possession over the property is not sufficient unless it is proved that they are in lawful possession or occupation. There is nothing on record to show that the respondents are in lawful possession of the property in question and there is no prima facie evidence on record to show that the respondents are tenants of the property

in question. It is an admitted position by the learned counsel for the petitioners that the father of respondent no. 2/2 was the servant of the petitioner trust for cultivation and management of the agricultural land of the trust. After the death of the father of respondent no. 2/2, the respondent no. 2/2 is residing illegally and he has not paid any rent to the petitioner. Hence, the suit has to be filed in that respect being Civil Suit no. 90 of 1979 which was dismissed in default. Thereafter, another suit for the same cause of action was filed being Civil suit no. 100 of 1993. Besides this, the father of respondent no. 2/2, the petitioner has never admitted that any of the respondents came in possession in lawlful manner.

3. On the other hand, the petitioners have filed a suit against the respondent for a declaration that the respondents are trespassers of the land in question. In this connection, the learned counsel for the petitioner also relied on the decision of the Supreme Court in the case Mst. Subhadra vs. Narsaji Chenaji Marwadi reported in AIR 1966, SC, 806 wherein it was contended that the land when granted in lease being agricultural, the provisions of Bombay Act did not apply thereto and the application was not maintainable. The Court of Small Causes upheld the contention of the respondent and dismissed the application. This order was confirmed in appeal by the District Court at Ahmedabad and in a revision application to the HIgh Court of Judicature at Bombay. The Supreme Court was in full agreement with the opinion of the High Court that the plot in dispute could not be regarded as "premises" inviting the application of Part II of the Act. The application filed by the appellant under section 11 for fixation of standard rent was therefore not maintainable. In the same manner, in the present case also, the land being agricultural land, the provisions of the Rent Act would not be applicable.

4. On the contrary, the learned counsel for the respondents contended that the petitioners filed a suit against one of the respondents wherein the arrears of rent have been claimed treating one of the respondents as a tenant. The learned counsel for the respondents invited the attention of the court to the plaint of the suit to show that the suit was filed against only one person, the father of respondent no. 2/2. The father of respondent no. 2/2 was the servant of the trust for the management of the agricultural activities. The learned counsel for the respondents also referred the affidavit-in-reply filed in the aforesaid petition. It

is stated that the issue raised in the memo of the petition as to whether the Bombay Rent Act is applicable is altogether misleading issue which does not apply in the present case. As the petitioners have not produced any document showing the land as agricultural land and the petitioners are cultivating the same. The petitioners have tried to mislead this Court by mentioning the land as agricultural land. On the other hand, at page-15 of the memo of the petition, it is stated that the respondents are occupying their possession illegally and their property being municipal census no. 596, 591, 600, 589, 600/2 etc. clearly show that the said land is within the area of Dakor Municipality and the respondents are paying property tax etc. Hence, it cannot be said that the said land is an agricultural land and the provisions of the Bombay Rent Act would not be applicable. As per the pronouncement of the judgment of this Court as well as of the Apex Court, when TP scheme is implemented for a particular area, it is not necessary for the parties to obtain permission for getting the land converted into non-agricultural land from agricultural land and by virtue of the said proposition, the land cannot be termed as even agricultural land. Even if we assume for the sake of argument that the said land is an agricultural land. Neither the petitioners nor respondents are doing any agricultural activities over the said land. The petitioners cannot take any advantage of their own wrong as they have failed to convert the said agricultural land into non-agricultural land. The petitioners have never produced any evidence showing that the said land is an agricultural land. Even the entries in 7/12 forms of revenue record showing the land as agricultural land would not bar the provisions of the Bombay Rent Act.

4. I have carefully considered the contentions advanced by the learned counsel for the rival parties. The learned counsel for the petitioners raised a legal aspect before the District Court that the provisions of section 23-A of the Rent Act are not applicable and so no permission can be granted for giving the electricity connection to the respondents. But the District Court has not recorded any finding as to whether the provisions of the Rent Act are applicable or not to the facts and circumstances of the present case. However, the District Court has come to the conclusion that the respondents are in possession on the basis of the municipal assessment. Therefore, the respondents being in occupation are entitled for the electricity connection. But both the authorities have not recorded any finding as to whether there is a prima facie evidence

to show that the respondents are tenants of the property of the petitioners for claiming electricity facilities. From the evidence on record, it appears that there is nothing on record to show that there is a prima facie case to show that the respondents are tenants of the suit land in dispute and they cannot be allotted and if they are trespassers, to obtain electricity connection. In case, the respondents are not in lawful possession and if it is disputed and the suit is still pending in that connection and so the respondents cannot claim the benefit under section 23-A of the Act.

5. It appears that there is some controversy on the admission of the petitioners that the father of respondent no.2/2 had come into lawful possession as a servant engaged by the petitioners. Therefore, it can be said that the respondent no. 2/2 can be treated as a tenant though no finding is recorded in this respect. Only prima facie case is made out only in respect of respondent no. 2/2 and he can be entitled for the benefit of the provisions of section 23-A of the Act.

6. In the facts and circumstances, these petitions deserve to be allowed and accordingly they are allowed. The impugned orders are hereby quashed. Rule is made absolute accordingly with no order as to costs.

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